

House Bill 1043

By: Representative Barnes of the 78th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to deposit account fraud, so as to prohibit the stop payment of checks for consideration or wages; to require financial institutions to provide verification as to the sufficiency of funds when a stop payment is ordered; to provide for related matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to deposit account fraud, is amended by striking subsection (a) and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) A person commits the offense of deposit account fraud when such person makes, draws, utters, executes, or delivers an instrument for the payment of money on any bank or other depository in exchange for a present consideration or wages, knowing that it will not be honored by the drawee or issues a stop-payment order directing the bank or other depository on which the instrument is drawn not to honor said instrument knowing that the instrument would not otherwise be honored by the drawee. For the purposes of this Code section, it is prima-facie evidence that the accused knew that the instrument would not be honored if:

(1) The accused had no account with the drawee at the time the instrument was made, drawn, uttered, or delivered;

(2) Payment upon presentation within 30 days after delivery was refused by the drawee for lack of funds ~~upon presentation within 30 days after delivery~~ or due to a stop-payment order issued on an account that does not bear sufficient funds to process the instrument and the accused or someone for him or her shall not have tendered the holder thereof the amount due thereon, together with a service charge, within ten days after receiving

written notice that payment was refused upon such instrument. For purposes of this paragraph:

(A) Notice mailed by certified or registered mail or statutory overnight delivery evidenced by return receipt to the person at the address printed on the instrument or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received as of the date on the return receipt by the person making, drawing, uttering, executing, or delivering the instrument. A single notice as provided in subparagraph (B) of this paragraph shall be sufficient to cover all instruments on which payment was refused and which were delivered within a ten-day period by the accused to a single entity, provided that the form of notice lists and identifies each instrument; and

(B) The form of notice shall be substantially as follows:

'You are hereby notified that the following instrument(s)

| <u>Number</u> | <u>Date</u> | <u>Amount</u> | <u>Name of Bank</u> |
|---------------|-------------|---------------|---------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

drawn upon _____ and payable to _____, (has) (have) been dishonored.

Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$_____ and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being _____ dollars and _____ cents. Unless this amount is paid in full within the specified time above, a presumption in law arises that you delivered the instrument(s) with the intent to defraud and the dishonored instrument(s) and all other available information relating to this incident may be submitted to the magistrate for the issuance of a criminal warrant or citation or to the district attorney or solicitor-general for criminal prosecution.'; or

(3) Notice mailed by certified or registered mail or statutory overnight delivery is returned undelivered to the sender when such notice was mailed within 90 days of dishonor to the person at the address printed on the instrument or given by the accused at the time of issuance of the instrument."

SECTION 2.

1 Said Code section is further amended by inserting a new subsection (l) to read as follows:

2 "(l) A financial institution presented with an instrument that is to be returned because of
3 a stop-payment order shall provide verification to the holder of the worthless instrument
4 as to whether there were sufficient funds in the accused's account to process the instrument
5 at the time the stop payment was ordered and at the time the instrument was presented."

6
7 **SECTION 3.**

8 This Act shall not apply to any offense committed before July 1, 2006. The provisions of this
9 Act shall not apply to, create, or affect any cause of action arising out of acts committed prior
10 to July 1, 2006.

11 **SECTION 4.**

12 All laws and parts of laws in conflict with this Act are repealed.